

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10104 of 2021

(Arising out of OIA-AHM-EXCUS-001-APP-38-45-2020-21 Dated-09.10.2020 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

GUJARAT CHAMBER OF COMMERCE AND INDUSTRYAppellant

Shri Ambica Mills Building Ashram Road
Ahmedabad, Gujarat

VERSUS

C.C.E.-AHMEDABAD-I

.....Respondent

C. Ex Bhavan, Nr Panjrapole & Polytechnic,
Ambavadi, Ahmedabad, Gujarat-380015

WITH

- **Service Tax Appeal No 10490 of 2021-(GUJARAT CHAMBER OF COMMERCE AND INDUSTRY);**
- **Service Tax Appeal No 10491 of 2021-(GUJARAT CHAMBER OF COMMERCE AND INDUSTRY);**
- **Service Tax Appeal No 10492 of 2021-(GUJARAT CHAMBER OF COMMERCE AND INDUSTRY);**
- **Service Tax Appeal No 10493 of 2021-(GUJARAT CHAMBER OF COMMERCE AND INDUSTRY);**
- **Service Tax Appeal No 10494 of 2021-(GUJARAT CHAMBER OF COMMERCE AND INDUSTRY);**
- **Service Tax Appeal No 10495 of 2021-(GUJARAT CHAMBER OF COMMERCE AND INDUSTRY);**
- **Service Tax Appeal No 10496 of 2021-(GUJARAT CHAMBER OF COMMERCE AND INDUSTRY);**

(Arising out of OIA-AHM-EXCUS-001-APP-38-45-2020-21 Dated-09/10/2020 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

APPEARANCE:

Shri. Bishan R. Shah, Chartered Accountant for the Appellant

Shri. J A Patel, Superintendent (Authorized Representative) for the respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Final Order No. A/ 11027-11034 /2022

DATE OF HEARING: 05.05.2022
DATE OF DECISION: 29.08.2022

RAMESH NAIR

These appeals have been filed by the appellant M/s. GUJARAT CHAMBER OF COMMERCE AND INDUSTRY, AHMEDABAD-I, against Order-In-Appeal No.AHM-EXCUS-001-APP-38-45-2020-21 Dated-09.10.2020 whereby the rejection of refund claims ordered by the adjudicating authority was upheld and appeals filed by the appellant were rejected. The facts of the case in brief are that the appellant was registered with the Service Tax Department for providing services under various categories such as Club & Association Service, Mandap Keeper Service, Renting of Immovable Property Service, Legal Consulting Service, Technical & Inspection and Certification Agency Service, Sponsorship Service and Selling of Space or Time Slots for advertisement was holding service tax registration on 25.03.2013. The Hon'ble Gujarat High Court in the case of Sports Club of Gujarat Ltd., Rajpath Club Ltd and Karnavati Club Ltd. Vs. Union of India (S.C.A No. 13654, 13655 and 13656 of 2005 respectively) held that Section 65 (25a), section 65 (105) (zzze) and Section 66 of the Finance Act (No.2) Act, 1994 as incorporated/amended by the Finance Act, 2005 is ultra virus to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club to its members. Being aggrieved with the said judgment of Hon'ble Gujarat High Court, the Department preferred appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court finally decided the matter in case of Calcutta Club Limited reported at-2019-TIOL-449-SC-ST-LB on 03.10.2019. Pursuant to the said decision of Hon'ble Gujarat High Court followed by the decision of the Hon'ble Supreme Court, the appellant filed eight refund claims for the service tax paid by them in the relevant years, the details of which have been shown in the table hereinabove:-

Sr. No	Order-In-Original No. and Date	Period Involved	Ref. Claim filed on	Amount	Appeal No.
1.	CGST-VI/Ref-07/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	2010-11	27.01.2020	534060	ST/10104/2021
2.	CGST-VI/Ref-08/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	2011-12	27.01.2020	1697127	ST/10490/2021
3.	CGST-VI/Ref-09/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	2012-13	27.01.2020	1042129	ST/10491/2021
4.	CGST-VI/Ref-10/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	2013-14	27.01.2020	1797886	ST/10492/2021

5.	CGST-VI/Ref-11/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	2014-15	27.01.2020	1568492	ST/10493/2021
6.	CGST-VI/Ref-12/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	2015-16	27.01.2020	1528904	ST/10494/2021
7.	CGST-VI/Ref-13/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	2016-17	27.01.2020	2058967	ST/10495/2021
8.	CGST-VI/Ref-14/GCCI/DC/DRS/2020-21 Dated 12.06.2020.	April-2017 to June-17	27.01.2020	655193	ST/10496/2021
		TOTAL		10882758	

Contending that they being incorporated members organization are not liable to pay service tax. On verification of the refund claim, it was found that all the claims liable for rejection and therefore the show cause notices were issued for all the claims separately. The said show cause notices were adjudicated by the adjudicating authority separately and all the refund claims were rejected vide the Orders-In-Original and relying upon the judgment of Hon'ble Supreme Court of India in case of M/s. Mafatlal Industries Vs. Union of India-1997 (89) ELT 247 (S.C). In view of the provision contending Section 11B of the Central Excise Rule, 1944 as made applicable to the service tax by section 83 of Finance Act, 1944. The refund claim was rejected on the following grounds:-

"(i) the appellant was registered as a 'Society' under the Societies Registration Act, 1860 for doing "business" only and they were neither registered nor acting as club or association like Sports Club of Gujarat Ltd. Karnavati Club or Rajpath Club, and thus were not covered under Club or Association but can be covered under 'Society' only;

(ii) they have not produced any proof that the service was rendered to their members for a subscription or any other amount;

(ii) during the relevant period, the tax had been paid under self-assessment and had never been paid under protest at any point of time and therefore the time limit prescribed under Section 11B of the Central Excise Act, 1944 would be applicable in the matter;

(iv) the scrutiny of refund claims revealed that the said refund claims not only included the amount of service tax paid by the appellant in respect of Club and Association Service, but also included the amount of service tax paid by them in respect of the Mandap Keeper Service and Technical & Inspection and Certification Agency Service through the Judgment of Gujarat High Court and Apex Court had been delivered in respect of Club and Association Service only and thus the said judgments cannot be made applicable to the services other than Club and Association Service;

(V)the appellant did not submit any proof regarding the non-availment of cenvat credit in view of the position that if the service under the Club & Association Service a considered as non-taxable, the procedure under Rule 6(3) of the Cervat Credit Rules, 2004 is required to be followed.”

Being aggrieved by the Orders-In-Original the appellant preferred the appeals before the Commissioner (Appeals). Learned Commissioner (Appeals) rejected the appeals filed by the appellant, therefore, the present appeals filed by the appellant.

2. Shri. Bishan R. Shah, Learned Chartered Accountant appearing on behalf of the appellant submits that the refund claim in the present case was filed in pursuance of Hon’ble Supreme Court judgment in the case of Culcutta Club Limited. The refund arises only after the said Apex Court judgment, therefore, the relevant period starts from the date of the Supreme Court judgments only. The appellant have filed the refund claim within one year from the date of judgments, therefore, the Lower Authorities have wrongly rejected the claim on the ground of time bar. He submits that in the case of Culcutta Club Limited, Federation of Indian Chambers of Commerce and Industry (FICCI) was one of the party and present appellant being a member of Federation of Indian Chambers of Commerce and Industry (FICCI), the refund arises out of the Hon’ble Supreme Court judgment in the Culcutta Club Limited case. He further submits that even otherwise the amount of Service Tax paid by the appellant was not payable as the same was without authority of law and in the case of such payment provision of Section 11B is not applicable. Consequently, the limitation provided in such section will also not apply. In support, he placed reliance on the following judgments:-

- High Court of Jharkhand in the case of Ranchi Club Ltd Vs. CCE&ST Ranchi in WP(T) No. 2388/2007 dated 15.03.2012 reported in 2012 (26)STR 401 (Jhar.)
- Calcutta High Court decision in the case of Dalhousie Institute Vs. Asst. Commr., Service Tax Cell, 2005 (180) ELT 18 (Cal.)
- Hon’ble Supreme Court in the case of Secretary, the Madras Gymkhana Club Employees Union Vs. Management of the Gymkhana Club (1968) 1 SCR 742

- Joint Commercial Tax Officer Vs. Young Men's Association (1970)
26 STC 241 (SC)
- Delhi Tribunal's decision in Rolls royce Indus. Power (I) Ltd. Vs. CCE-2004)171) ELT 189 (T)
- Toyota Kirloskar Auto Parts Ltd Vs. CC-2007 (210) ELT 390 (T)
- Precot Mills Limited Vs. CCE-2006 (2) STR 495 (T)
- Commissioner of Income Tax Vs. Darjeeling Club Ltd.-1985
(153) ITR 676
- Addl. CIT Vs. Surat Art Silk Cloth Manufacturers Association-
1980 (121) ITR 1 (SC)
- CIT Vs. Sole Trustee, Loka Shikshanna Trust-1975 (101) ITR 234
(SC)
- CIT Vs. Andhra Chamber of Commerce-1965 (55) ITR 722 (SC)

3. On the other hand, Shri. J A Patel, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that the Learned Commissioner (Appeals) has decided the entire matter on the ruling laid down by the Hon'ble Supreme Court constitutional bench judgment in the case of Mafatlal Industries Limited, according to which since the appellant is not the party to the case of Culcutta Club Limited. The appellant cannot get the benefit of the said judgment. He submits that since the appellant have never challenged the levy of service tax at any point of time and the refund claims were filed admittedly after one year, the same is clearly time bar, hence, the refund was rightly rejected by the lower authority. He placed reliance on the following judgments:-

- 2019 (29) G.S. T.L 632 (Ker.)-S.I. Property Kerala Pvt. Ltd Vs. Commr. Or C. Ex., Cus. & S.T. and C.T., Thiruvananthapuram.
- 1997 (89) ELT 247 (S.C.)-Mafatlal Industries Ltd Vs. Union of India.
- Ajni Interiors Vs. Union of India & I Other (S) in Special Civil application No. 10435 of 2018

4. I have carefully considered the submission made by both the sides and perused the records. In the present case the fact is not under dispute that the appellant have admittedly paid the service tax on the service of Club or Association and same was not challenged by them at any point of time. They filed refund claims on 27.01.2020 for the period from 2010-2011 to 2017-2018 (April to June-2017), therefore, the claim of the appellant was filed after one year limit which is prescribed under Section 11B. As regard, the submission of the appellant that they being a member of Federation of Indian Chambers of Commerce and Industry (FICCI) and Federation of Indian Chambers of Commerce and Industry (FICCI) was one of the party in the Culcutta Club Limited case, the period of limitation should start from the date of the judgment of the Supreme Court. We find that all the parties in the Culcutta Club Limited was litigating their own case and not on behalf of their members, therefore, it cannot be said that the appellant was anywhere concerned with the cases decided by the Hon'ble Apex Court in the Culcutta Club Limited case. Therefore, the benefit of limitation on the basis of the Culcutta Club Limited case cannot be extended to the appellant. As regard, the submission of the appellant that since, the service tax itself was not payable on the service of Club and Association as laid down by the Apex Court in the Culcutta Club Limited case the refund of the same will not governed by the provision of Section 11B. In this regard, I find that the appellant have admittedly paid the service Tax under the head of Club and Association. Therefore, the refund of such service tax shall be governed by Section 11B as held by the Hon'ble Supreme Court in the case of Mafatlal Industries Limited.

4.1 I have carefully read the impugned order and found that the Learned Commissioner (Appeals) has given a detailed finding based on the Hon'ble Supreme Court judgment in the case of Mafatlal Industries Limited and clearly came to the conclusion that first the benefit of the Culcutta Club Limited case is not available to the appellant. Secondly, the appellant since filed the refund claim after one year from the date of payment of service tax, the same is hit by limitation. The Learned Commissioner (Appeals) also considered in detail, the submission of the appellant in as much as they claimed that they being a member of Federation of Indian Chambers of Commerce and Industry (FICCI) should get the benefit of the Culcutta Club Limited case as the Federation of Indian Chambers of Commerce and Industry (FICCI) was one of the party in that case. On going through the finding of the impugned order carefully I do not see any infirmity in the

impugned order. The refund of the appellant is clearly hit by limitation in terms of the Section 11B of the Central Excise Rule, 1994.

5. Accordingly the impugned order is upheld and appeals are dismissed.

(Pronounced in the open court on 29.08.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

PRACHI